

REQUEST FOR QUOTATION

QUOTE DUE DATE 4/13/2006

TO: _____

(Please enter your company name above)

ATTN Quote Desk

THIS IS A QUOTE, NOT AN ORDER

PLEASE QUOTE PROMPTLY

City may accept the quote which is the most advantageous to the City which may not necessarily be the lowest quote. The City has the right to accept all or part of this quote.

CITY OF SAN JOSE FINANCE/PURCHASING

200 EAST SANTA CLARA ST., SAN JOSE, CALIFORNIA, 95113-1905 FAX: (408) 292-6480

DATE: 4/4/2006

REPLY TO: Daryl Gerstenberger (408) 535-7057

QUOTE#: 15667

VENDOR: YOU MUST COMPLETE THIS INFORMATION IN ORDER FOR YOUR QUOTE TO BE ACCEPTED.

1. Business Name			
Business Address		Street: _____ City: _____	
		ZIP: _____ County: _____ State: _____	
Remittance Address		Street: _____ City: _____	
		ZIP: _____ County: _____ State: _____	
Telephone No.		FAX No.: _____ E-mail Address: _____	
Type of Business		<input type="checkbox"/> LLC <input type="checkbox"/> LLP <input type="checkbox"/> Corporation - Name State of Incorporation: _____	
		<input type="checkbox"/> General Partnership <input type="checkbox"/> Sole proprietorship <input type="checkbox"/> Other (explain): _____	
2. We agree to ship within _____ days, from: _____, via: _____			
3. F.O.B Point: DESTINATION* If Bidder changes to F.O.B. Shipping Point, Bidder Must provide freight charges: \$ _____			
4. Terms: N/30 or _____ % N/20. This is the minimum acceptable discount period the City will consider.			
5. Are you incorporated?		Yes <input type="checkbox"/> No <input type="checkbox"/> If No, Please provide completed W-9 Form	
6. City of San Jose Business Tax Certificate # _____ CA Contractor's License (If applicable): _____			

Environmental Friendly Product? (Optional)		Yes <input type="checkbox"/>	No <input type="checkbox"/>	Recyclable?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Mercury content?		Yes <input type="checkbox"/>	No <input type="checkbox"/>	Less toxic alternatives available?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
		If Yes, explain: _____					

Local Preference (Optional) - Based upon the information supplied below, I hereby certify that my firm qualifies as:	
<input type="checkbox"/>	LOCAL BUSINESS ENTERPRISE - (LBE) - The business has the following: 1) an office with at least one employee located in Santa Clara County, California, and 2) a current San Jose Business Tax Certificate.
<input type="checkbox"/>	SMALL BUSINESS ENTERPRISE - (SBE) - The business must qualify as an LBE and have 35 or fewer employees (This number is for the ENTIRE business - NOT just local employees). State number of employees: _____

The following determinations have been made with respect to this procurement: (for official use only)			
Type of Preference	<input checked="" type="checkbox"/> Price is Determinitive	<input type="checkbox"/> Price is Not Determinitive	<input type="checkbox"/> LBE/SBE Not Applicable
Amount of Preference	LBE preference = 2.5% of Cost	LBE preference = 5% of Points	SBE preference = 5% of Points

REQUEST FOR QUOTATION

QUOTE#: 15667

**CITY OF SAN JOSE
FINANCE/PURCHASING****200 EAST SANTA CLARA ST., SAN JOSE, CALIFORNIA, 95113-1905 FAX: (408) 292-6480****DESCRIPTION**

The City of San Jose will issue an Open Service Order for the period of 4/14/06 - 6/30/06 for the following:

PROVIDE ALL LABOR, MATERIAL AND EQUIPMENT NECESSARY FOR THE REMOVAL AND DISPOSAL OF
PLAYGROUND PLAY AREA SURFACE MATERIAL AT VARIOUS CITY SITES AS REQUIRED.

The City shall have the option, at its sole discretion, to exercise two (2) one (1) year extensions for this open service order.

NOTE: Please refer to the attached "Option to Renew Letter" for price escalation provisions for contract extension periods.

Included in this solicitation are the following documents related to this Request for Quotation (RFQ):

-RFQ Form

-Scope of Services

-Exercise of Option Letter

-Insurance Requirements

-Terms and Conditions (governing Service Order)

GENERAL REQUIREMENTS:

1. Contractor shall hold and maintain a current and active Contractor's License, either a Class A, B, or C-27.

2. Contractor shall include the following information on all work reports/work tags: Date work performed,
location work was performed, specific surface type removed and disposed of, the classification of the worker(s) required
to perform the work, the total number of hours required by worker classification, and total material cost with mark-up noted.

3. Contractor shall make maintenance recommendations in order to minimize the prospect of failures with existing
playground surface areas

4. Contractor shall have the capability to remove resilient surfaces utilizing hand digging methods (wheel barrels and shovels),
and also by utilizing a Bobcat, or similar small equipment, as the requirements of the Playground and adjacent surfaces dictate.

PLEASE PROVIDE RATES ON THE FOLLOWING PAGE.

NOTE: PLEASE BREAK OUT SALES TAX SEPARATELY

ALL QUOTES, INCLUDING NO BIDS, MUST BE RETURNED TO REMAIN ON CITY'S APPROVED VENDOR LIST.

Attachments: ☒ Insurance Requirements ☒ Prevailing Wage Policy ☒ Living Wage Policy

I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: City: _____ State: _____ Date: _____

Signature: _____ Print or type name: _____

MATERIALS EXCAVATION SCOPE OF SERVICES

Excavation of various materials to be removed and discarded, from play lots or any City of San José owned property locations; ex. Of materials could be the following:

- Sand
- Tanbark
- Fibar
- Dirt
- Mud
- Or any related materials

1. Charges per man-hour per an 8-hour day.
2. Charges for removing materials from requested site areas with small equipment
3. Charges for hand removal of related materials from any sites. Ex. Stamped concrete and/or landscape surroundings and hard to get places that makes it hard for equipment to get to. (May need to use wheel barrels)

The following unit costs will apply for this contract with an average depth of 24"

- 0- 20 Cubic Yards \$ _____
- 21- 50 Cubic Yards \$ _____
- 50-100 Cubic Yards \$ _____

This includes trucking and disposal with using light equipment.

The following unit costs will apply for this contract with an average depth of 24"

- 0- 20 Cubic Yards \$ _____
- 21- 50 Cubic Yards \$ _____
- 50-100 Cubic Yards \$ _____

This includes trucking and disposal without equipment (by hand)

OPTION TO RENEW
Price Escalation Provision for “Option-Year” Periods

At the City's sole discretion the Service Order may be extended for two one-year periods. Unit Prices may be adjusted annually at the commencement of an extension period. Rate escalations, if any, shall be in accordance with the Consumer Price Index, generated by the U.S. Dept. of Labor, Bureau of Statistics. The specific Index used will be the San Francisco-Oakland-San Jose, Code 9240, CPI-U, released nearest the renewal date. The escalation factor used shall be the last published Annual Average.

NOTE: Any annual increase or decrease shall not exceed 5% of the previous years pricing.

First Extension: July 1, 2006 through June 30, 2007

Second Extension: July 1, 2007 through June 30, 2007



FINANCE DEPARTMENT
Purchasing Division

Dear Company Official:

Please forward the attached insurance requirements to your insurance agent. Have your agent fax a copy of the completed insurance certificate to 408-535-7062, attention Jane Perez, and mail the original certificate and endorsements to:

City of San Jose
c/o Debt & Risk Management Division
200 E. Santa Clara St.
San Jose, CA 95113

Specific answers to questions regarding insurance requirements should be obtained from the Risk Manager's Office at 408-292-6489.

Regards,

Daryl Gerstenberger
Procurement Specialist

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001 including products and completed operations; and
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage also to include code 8 "hired autos" and code 9 "non-owned" autos; and
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

D Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
- b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City.

E Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

F Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages. This proof of insurance shall then be mailed to: **Risk Management, Finance, CITY OF SAN JOSE 200 East Santa Clara Street , San Jose, CA 95113-1905 Phone: (408) 535-7062 Fax: (408) 292-6489**

G Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.



FINANCE DEPARTMENT
Purchasing Division

Company Official:

The attached addendum needs to be signed and returned with your quotation as acknowledgement of the Living Wage/Prevailing Wage requirements on this project.

If you are awarded the contract, the City will sign the form and return a copy to you along with the Service Order. At the same time the appropriate forms for contract compliance will also be attached to your Service Order for you to fill out and return to the Office of Equality Assurance.

In order for your response to be deemed responsive, the signed addendum must be included with your quotation. If you have any questions please e-mail me at "daryl.gerstenberger@sanjoseca.gov."

Sincerely

Daryl Gerstenberger
Procurement Specialist

LABOR COMPLIANCE ADDENDUM

SAN JOSÉ LIVING WAGE AND PREVAILING WAGE POLICIES

AGREEMENT TITLE:	<i>Provide all labor, material and equipment necessary for the removal and disposal of Playground Play Area Surface Material at various City sites as required.</i>
CONTRACTOR Name and Address:	

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled **Work Classification and/or Living Wage Determination**.

- A. *Prevailing Wage Requirements.*** California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
- B. *Living Wage Requirements.*** Any person employed by Contractor or subcontractor or City financial recipient or any subrecipient whose compensation is attributable to the City's financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.
- C. *Reports.*** Contractor shall file a completed and executed copy of this Addendum with the Department of General Services. Upon award the Department of General Services shall provide the contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.
- D. *Coexistence with Any Other Employee Rights.*** These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

E. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. Enforcement.

1. General. Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):

- a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

CITY OF SAN JOSÉ - LABOR COMPLIANCE ADDENDUM - PAGE 3

- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City

Contractor

By _____
Name: Greg Pustelnik
Title: Purchasing Agent
Date: _____

By _____
Name: _____
Title: _____
Date: _____

Work Classification Determination

The following classification(s) are applicable to this contract. The prevailing wage rates for this contract are contained in the General Prevailing Wage Determination issued by the Director of Industrial Relations. More information about the General Wage Determination is provided on the next page. If you have any questions regarding the classifications listed for this contract, please contact the Office of Equality Assurance and reference the OEA# at the bottom of this page.

Work Description

Classification(s)

Equipment Operation

Craft: Operating Engineer*
[Northern California Basic Trade Determinations, Pgs. 39-40]

General Labor

Craft: Laborer, Group 3
[Northern California Basic Trade Determinations, Pgs. 49-50]

Debris Removal Only

Craft: Laborer, Group 4
[Northern California Basic Trade Determinations, Pgs. 49-50]

For any work not expressly identified, please contact the Office of Equality Assurance at 408-535-8430.

PREVAILING WAGE REQUIREMENT ATTACHMENT

Instructions to Obtain Prevailing Wage Determination

A copy of the current General Prevailing Wage Determination made by the Director of Industrial Relations may be obtained from the Office of Equality Assurance at:

Equality Assurance
Public Works
200 East Santa Clara Street
San Jose, CA 95113-1905
Phone: 408.535.8430 Fax: 408.292.6270

For Internet access to current wage rates and benefit information, you may contact the California Department of Industrial Relations web site at <http://www.dir.ca.gov/>. Click on **Statistics & Research**. Scroll down to Current Prevailing Wage Determinations and click on the corresponding **General Prevailing Wage Determinations Menu (Journeyman)**. Scroll down and follow the directions until you locate the trade applicable to your contract. Prevailing wages for City of San Jose contracts will be found under:

- Step One **Statewide**,
- Step Two (A) **Northern California**, or
- Step Four for **Santa Clara County**

Effective Dates of Determination and of Rates within Determination

Contractors are advised that rates determined by the Department of Industrial Relations are subject to change during the term of this contract as described below.

Effective date of determination. All determinations issued by the Director of the Department of Industrial Relations will be effective ten (10) days after issuance. Determinations issued by the Director will show an issue date and will ordinarily show an expiration date. All determinations will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the Director. Contractors are advised to note the expiration date on the prevailing wage classification identified for this solicitation and the asterisk (*) as explained in the paragraph below.

Meaning of single and double asterisks. Prevailing wage determinations with a single asterisk (*) after the expiration date (which are in effect on the date of advertisement for bids) remain in effect for the life of the project. Prevailing Wage determinations with double asterisks (**) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payment to be paid for work performed *after* this date have been predetermined. If work is to be extended past the rate expiration date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates (415) 703-4774.

All determinations that do not have the double asterisks (**) after the expiration date remain in effect for the life of the contract.

CITY OF SAN JOSE
SERVICE ORDER TERMS AND CONDITIONS

NOTICE: The Terms and Conditions listed below are the Terms and Conditions on the back of the City's Service Order. These are the only Terms and Conditions the City will agree to. The City has NO intention of negotiating these. If your company is not able to agree to these Terms and Conditions please do NOT respond to any Request for Quotation (RFQ). If your company has any question about these, you should ask the Buyer responsible for the RFQ at least two (2) business days prior to the RFQ due date.

1. **DEFINITIONS:** City shall mean the City of San Jose or any department thereof, Service Order means that certain contract for services which includes these terms and conditions as well as the information contained on the completed form appearing on the reverse of these Terms and Conditions. References in quotes refer to the designation on the reverse. Contractor shall mean the business as designated under "Vendor".
2. **SCOPE OF SERVICES:** Contractor shall perform those services specified in detail in "Description of Services". Contractor will supply all tools and instrumentalities required to perform this Service Order.
3. **DATA AND FACILITIES:** Contractor acknowledges that it has in its possession all applicable specifications and drawings, and all other documents to which reference is made herein and/or which are matched hereto, and that such data are adequate to enable Contractor fairly to determine its ability to perform work called herein at the price and in accordance with the schedule set forth. Contractor represents that it now has or can readily procure without assistance of City all personnel, facilities, machinery and equipment necessary for the performance of this Service Order.
4. **CONTRACT:** This purchase order constitutes City's offer to Contractor and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Contractor either by acknowledgement or commencement of performance. Any terms or Conditions by Contractor in accepting City's offer, which are inconsistent with or in addition to the terms and conditions set forth, shall be void and no effect unless and to the extent expressly accepted by City in writing.
5. **SCHEDULE OF PERFORMANCE:** Contractor's services shall be completed according to the schedule set forth in "Description of Services". Time is of the essence in this Service Order.
6. **TERM:** The term of this Service Order shall be as set forth in "Description of Services."
7. **COMPENSATION:** The compensation to be paid and the method of payment for Contractor for services provided shall be set forth in the "Description of Services", Contractor shall be responsible for all costs and expenses incident to the performance of this Service Order, including all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor, and all other of Contractor's costs of doing business.
8. **INDEPENDENT CONTRACTOR:** It is understood and agreed that Contractor shall act as and be an independent Contractor and not an employee, agent, joint venturer, or partner of

City. As an independent Contractor, Contractor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Contractor hereby expressly waives any claim it may have to any such rights. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Service Order.

9. **INSURANCE REQUIREMENTS:** Contractor agrees to have and maintain the policies set forth in "Insurance", which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These Requirements are subject to Amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Service Order.
10. **CONTRACTOR'S DEFAULT:** City's Director of General Services or the director's authorized designee may, by written notice to Contractor, cancel this Service Order, in whole or from time to time in part: (I) if the Contractor fails to perform this services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the Services performed do not conform to contractual requirements or if Contractor fails to perform any of the other provisions of this Service Order, or fails to make progress so as to endanger performance of this Service Order, in accordance with its terms; or (iii) if the Contractor becomes insolvent or commits an act of bankruptcy. If this Service Order is canceled, City, in addition to all other rights afforded by law for Contractor's breach of contract, shall have the right to charge Contractor the amount by which the costs of obtaining the services canceled from another source exceed the prices specified herein, and City may set off any such charge against any amounts which may become payable to Contractor under this Service Order or otherwise. Notwithstanding City's right to cancel this Service Order for delay, Contractor shall not be liable to City for any damages therefor if: (I) Contractor's delay is due to causes beyond its control, and without its fault or negligence, provided Contractor promptly notifies City of the conditions causing the delay or, (ii) Contractor's delay is caused by the default of a subcontractor or supplier, but only if such default arises out of beyond the control of both Contractor and subcontractor or supplier and without the fault or negligence of either of them, and the articles or services to be furnished by them were not obtainable from other sources in sufficient time to permit Contractor to meet the required schedule.
11. **NON-FUNDING:** Each payment obligation is conditioned upon the availability of state or local government funds, which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Contractor, the product or service directly or indirectly involved in the performance of that function may be terminated by City at the end of the period for which funds are available. City shall notify Contractor at the earliest possible time of any products or services which will or may be affected by a shortage of funds. No penalty shall accrue for City in the event this provision is exercised, and City shall not be liable for any future payments due or for any damages as a result of termination under this Section. This provision shall not be construed so as to permit City to terminate this Service Order or any products or services in order to acquire similar equipment or service from another party. Contractor agrees to render any assistance which City may seek in effecting a transfer of any right of City in this Service Order, or any part hereof, that is required of City pursuant to the securing of financing hereunder.

- 12.COMPLIANCE WITH LAW: Contractor shall in the performance of this Service Order comply with all applicable Federal, State and local laws and regulations.
13. GOVERNING LAW: City and Contractor agree that the law governing this Agreement shall be that of the State of California.
14. VENUE: In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.
15. ASSIGNMENT OF CONTRACT: Contractor shall not assign any of the work to be performed under this Service Order nor shall Contractor subcontract for work without City's prior written consent.
16. WAIVERS: Failure by City to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Service Order, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such item, covenant or condition or the future exercise of such right, but obligation of Contractor with respect to such future performance shall continue in full force and effect.
- 17.CONFIDENTIAL INFORMATION: All data, documents, discussions or other information developed or received by or for Contractor in performance of this Service Order are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.
- 18.OWNERSHIP OF MATERIALS: All reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform the services required hereunder shall be and remain the property of City without restriction or limitation upon their use.
- 19.CHANGES: Buyer shall have the right by written notice to change the extent of the work covered by the Service Order, the time or place of delivery, the method of shipment or packaging, or to suspend work. The only valid change is a change order signed by the Director of General Services or director's authorized designee. Upon receipt of any such notice, Contractor shall promptly make the changes in accordance with the terms of the notice. If any such change causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment shall be negotiated promptly and the Service Order modified in writing accordingly. Contractor shall promptly deliver to Buyer, and in any event within (30) days after receipt of such notice, a statement showing the effect of any such changes in the delivery dates and prices, such statement to be supplemented within thirty (30) days from the date thereof by detailed specification of the amount of the price adjustment and supporting cost figures. Failure of Contractor to submit the statements within the above time limits shall constitute its consent to perform the change without increase in price, without claim for material rendered obsolete and without change in delivery schedule.
- 20.TERMINATION: The performance of work under this Service Order may be terminated in whole or from time to time in part by Buyer. City's Director of General Services is empowered to terminate this purchase order on behalf of City.

21. **CONTRACTOR'S BOOKS AND RECORDS:** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Service Order. Contractor shall maintain all documents and records which demonstrate performance under this Service Order for a minimum period of three (3) years, or for any period longer required by law, from the date of termination or completion of this service order. Any records or documents required to be maintained pursuant to this Service Order shall be made available for inspection or audit, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

22. **NON-DISCRIMINATION:**

a. **Prohibition on Discrimination and Preferential Treatment.**

Contractor shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, condition, or privileges of employment, subcontracting and purchasing.

Noting herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

b. **Compliance Reports.**

If directed by the Director of Equality Assurance of the City, Contractor shall file, and cause any subcontractor to file, compliance reports with the Director of Office of Equality Assurance. Compliance reports shall be in the forms and filed at such times as may designated by the Director of Office Equality Assurance. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Director of Office of Equality Assurance to determine whether Contractor or its subcontractor is complying with the nondiscrimination and non-preference provision of this Agree and Chapter 4.08 of the Municipal Code.

c. **Failure to Comply With Nondiscrimination Provisions**

If the Director of Office of Equality Assurance determines that the Contractor has not complied with the nondiscrimination or non-preference provisions of this Agreement, the City may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject Contractor and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

d. **Subcontracts.**

Contractor shall include provisions 1 through 3, inclusive, in each subcontract entered into in furtherance of this agreement so that such provisions are binding upon each of its subcontractors.

e. **Waiver of Non-discrimination Provisions.**

The non-discrimination provisions of this agreement may be waived by the Director of Office of Equality Assurance, if Director of Office of Equality Assurance determines that the Contractor has its own non-discrimination requirements or is bound in the performance of this agreement by the non-discrimination requirements of another government agency, and the non-discrimination provisions of the Contractor or other government agency are substantially the same as those imposed by the City.

- 23.GIFTS: Contractor represents that it is familiar with the City's prohibition against the acceptance for any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code. Contractor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Service Order by Contractor. In addition to any other remedies City may have in law or equity, City may terminate this Service Order for such breach.
- 24.CONFLICT OF INTEREST: Contractor shall avoid all conflict of interest or appearance of conflict of interest of this Service Order.
- 25.DISQUALIFICATION OF FORMER EMPLOYEES: Contractor is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance). Contractor shall not utilize either directly or indirectly any officer, employee, or agent who would be in violation of the Revolving Door Ordinance.
- 26.WARRANTY AGAINST INFRINGEMENT: If any article or service provided to City hereunder is covered, or is purported to be covered, by any patent or copyright, Contractor agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against any and all suits, claims, judgements and costs instituted or recovered against it by any person or persons whomsoever, on account of the purchase, use or resale of such article by City in violation or claimed violation of any rights under patent or copyright.
- 27.INDEMNITY: Contractor agrees to defend, indemnify and hold harmless the City, its officers, agents, and employees, from any and all claims and liability, including expenses, for injuries to persons or damage to persons or damage to or destruction of property caused by or resulting from the acts or omissions of Seller, its agents, suppliers or employees, in the performance of this purchase order.